

SENATE BILL No. 110

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-5-14; IC 34-24-5; IC 35-50-1-2; IC 35-50-2-2; IC 35-50-2-14.

Synopsis: Hate crimes. Requires law enforcement agencies to: (1) collect information concerning crimes that are apparently directed at an individual or a group because of the individual's or group's race, color, religion, sexual orientation, or national origin; and (2) submit the information to the Indiana central repository for criminal history information. Requires the Indiana central repository for criminal history information to submit a compiled report of this information to each law enforcement agency. Allows an individual who suffers a pecuniary loss as a result of: (1) being injured; or (2) having property damaged or destroyed by another individual; because of the individual's race, color, religion, sexual orientation, or national origin to bring a
(Continued next page)

Effective: July 1, 1999.

Howard

January 6, 1999, read first time and referred to Committee on Judiciary.



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Digest Continued

civil action against the individual who caused the loss. Defines bias crime offender. Requires a court, when sentencing an individual who has committed a crime motivated by a bias against another individual's race, color, religion, sexual orientation, or national origin, to impose an additional fixed term of imprisonment not to exceed five years.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 110

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-5-14 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]: **Sec. 14. (a) A law enforcement agency shall collect**
4 **information concerning crimes that are apparently directed at an**
5 **individual or a group because of the individual's or group's race,**
6 **color, religion, sexual orientation, or national origin.**
7 **(b) At least two (2) times each year, a law enforcement agency**
8 **shall submit information collected under subsection (a) to the**
9 **Indiana central repository for criminal history information.**
10 **(c) At least one (1) time each year, the Indiana central**
11 **repository for criminal history information shall submit a report**
12 **that includes a compilation of information obtained under**
13 **subsection (b) to each law enforcement agency.**
14 **(d) Information collected, submitted, and reported under this**
15 **section must be consistent with guidelines established for the**
16 **acquisition, preservation, and exchange of identification records**
17 **and information by:**
18 **(1) the Attorney General of the United States; or**



1 **(2) the Federal Bureau of Investigation under 28 U.S.C. 534.**
 2 SECTION 2. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS
 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 4 1, 1999]:

5 **Chapter 5. Civil Action for Victims of Bias Crime Offenders**

6 **Sec. 1. If an individual suffers a pecuniary loss because of the**
 7 **commission of an offense by another individual who was sentenced**
 8 **for the offense as a bias crime offender under IC 35-50-2-14, the**
 9 **individual may bring a civil action against the individual who**
 10 **caused the loss.**

11 **Sec. 2. In an action brought under section 1 of this chapter, the**
 12 **plaintiff may seek to recover the following:**

13 **(1) Actual, consequential, or incidental damages.**

14 **(2) The costs of the action.**

15 **(3) Reasonable attorney's fees.**

16 SECTION 3. IC 35-50-1-2 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) As used in this
 18 section, "crime of violence" means:

19 (1) murder (IC 35-42-1-1);

20 (2) voluntary manslaughter (IC 35-42-1-3);

21 (3) involuntary manslaughter (IC 35-42-1-4);

22 (4) reckless homicide (IC 35-42-1-5);

23 (5) aggravated battery (IC 35-42-2-1.5);

24 (6) kidnapping (IC 35-42-3-2);

25 (7) rape (IC 35-42-4-1);

26 (8) criminal deviate conduct (IC 35-42-4-2);

27 (9) child molesting (IC 35-42-4-3);

28 (10) robbery as a Class A felony or a Class B felony
 29 (IC 35-42-5-1);

30 (11) burglary as a Class A felony or a Class B felony
 31 (IC 35-43-2-1); or

32 (12) causing death when operating a motor vehicle (IC 9-30-5-5).

33 (b) As used in this section, "episode of criminal conduct" means
 34 offenses or a connected series of offenses that are closely related in
 35 time, place, and circumstance.

36 (c) Except as provided in subsection (d) or (e), the court shall
 37 determine whether terms of imprisonment shall be served concurrently
 38 or consecutively. The court may consider the aggravating and
 39 mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c)
 40 in making a determination under this subsection. The court may order
 41 terms of imprisonment to be served consecutively even if the sentences
 42 are not imposed at the same time. However, except for crimes of



1 violence, the total of the consecutive terms of imprisonment, exclusive
 2 of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to
 3 which the defendant is sentenced for felony convictions arising out of
 4 an episode of criminal conduct shall not exceed the presumptive
 5 sentence for a felony which is one (1) class of felony higher than the
 6 most serious of the felonies for which the person has been convicted.
 7 **If a court determines under IC 35-50-2-14 that a person was a bias**
 8 **crime offender when the person committed the offense for which**
 9 **the person was convicted, the term of imprisonment for the**
 10 **underlying offense and the additional term of imprisonment**
 11 **imposed under IC 35-50-2-14 may be served consecutively or**
 12 **concurrently.**

13 (d) If, after being arrested for one (1) crime, a person commits
 14 another crime:

- 15 (1) before the date the person is discharged from probation,
- 16 parole, or a term of imprisonment imposed for the first crime; or
- 17 (2) while the person is released:
- 18 (A) upon the person's own recognizance; or
- 19 (B) on bond;

20 the terms of imprisonment for the crimes shall be served consecutively,
 21 regardless of the order in which the crimes are tried and sentences are
 22 imposed.

23 (e) If a court determines under IC 35-50-2-11 that a person used a
 24 firearm in the commission of the offense for which the person was
 25 convicted, the term of imprisonment for the underlying offense and the
 26 additional term of imprisonment imposed under IC 35-50-2-11 must be
 27 served consecutively.

28 SECTION 4. IC 35-50-2-2 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The court may
 30 suspend any part of a sentence for a felony, except as provided in this
 31 section or in section 2.1 of this chapter. **The court may suspend any**
 32 **part of an additional term of imprisonment imposed under section**
 33 **14 of this chapter.**

34 (b) With respect to the crimes listed in this subsection, the court
 35 may suspend only that part of the sentence that is in excess of the
 36 minimum sentence:

- 37 (1) The crime committed was a Class A or Class B felony and the
- 38 person has a prior unrelated felony conviction.
- 39 (2) The crime committed was a Class C felony and less than seven
- 40 (7) years have elapsed between the date the person was
- 41 discharged from probation, imprisonment, or parole, whichever
- 42 is later, for a prior unrelated felony conviction and the date the



person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a Class A felony;
- (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the amount of controlled substance involved has an aggregate weight of three (3) grams or more;
- (Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or
- (R) aggravated battery (IC 35-42-2-1.5).



(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

SECTION 5. IC 35-50-2-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 14. (a) As used in this section, "bias crime offender" means an individual described in subsection (b).**

(b) The state may seek to have an individual sentenced as a bias crime offender by alleging, on a page separate from the rest of the charging instrument, that the individual knowingly or intentionally:

(1) selected another individual injured; or
(2) damaged or otherwise affected property;
by an offense committed by the individual named as defendant in the charging instrument because of the race, color, religion, sexual orientation, or national origin of the injured individual or of the owner or occupant of the affected property.

(c) If an individual alleged to be a bias crime offender under subsection (b) is convicted of an offense, the court, at the sentencing hearing for the offense, shall determine whether the individual is a bias crime offender.

(d) If, after the sentencing hearing, the court finds that the individual convicted of the offense that is the subject of the hearing is a bias crime offender based on proof beyond a reasonable doubt, the court shall sentence the individual to an additional fixed term of not more than five (5) years to be added to the term of imprisonment imposed under this chapter or IC 35-50-3.

SECTION 6. [EFFECTIVE JULY 1, 1999] **IC 5-2-5-14,**



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1 IC 34-24-5, and IC 35-50-2-14, all as added by this act, and
2 IC 35-50-1-2 and IC 35-50-2-2, both as amended by this act, only
3 apply to:
4 (1) crimes committed; and
5 (2) civil causes of action accruing;
6 after June 30, 1999.

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